



**HB77 HD1**  
**RELATING TO LANDS CONTROLLED BY THE STATE**  
Ke Kōmike Hale o ka Wai a me ka ‘Āina

Pepeluali 16, 2021

8:30 a.m.

Lumi 430

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB77 HD1, which would exempt the sales of leased fee interests for certain leasehold parcels by the Hawai‘i Housing Finance and Development Corporation (HHFDC) from the prior notice and legislative approval requirements under Hawai‘i Revised Statutes (HRS) § 171-64.7. OHA greatly appreciates that the HD1 version of this measure incorporates OHA’s suggested amendments on the original draft of this measure, **which would better ensure the protection of public and potentially “ceded” lands, to which Native Hawaiians maintain unrelinquished claims, from inappropriate alienation.**

As drafted, HB77 HD1 would circumvent the prior notice and legislative approval process established by the Legislature via Act 176, Session Laws of Hawai‘i (SLH) 2009, and Act 169, SLH 2011, for the sale of the fee interest in certain parcels of land leased by the HHFDC. Act 176 requires a two-thirds majority approval by both houses of the Legislature before any public lands controlled by the State can be sold. In addition, pursuant to Act 169, state departments must prepare and submit legislative resolutions containing detailed information regarding their anticipated land transactions, and share these resolutions with OHA at least three months prior to the opening of the legislative session. These Acts are now codified in HRS § 171-64.7(c). **Notably, the three months’ detailed notice in Act 169 provides OHA with sufficient time to determine, among other things, whether the lands contemplated for sale are “ceded” and, if so, whether the contemplated sale falls within one of the narrow exceptions to OHA’s opposition to the sale of “ceded” lands. The legislative supermajority approval requirement under Act 176 further provides OHA as well as the general public an opportunity to object to inappropriate proposals to sell or otherwise alienate “ceded” and public lands.**

OHA generally opposes any alienation or sale of “ceded” lands, originally taken without compensation to, or consent by, the Native Hawaiian people during the illegal overthrow of the Hawaiian Kingdom, pending the resolution of Native Hawaiians’ unrelinquished claims to these lands. However, this opposition is subject to narrow and limited exceptions; as described in the OHA BOT “Ceded Lands” policy, adopted in response to Act 176 (2009) and Act 169 (2011):

OHA reaffirms its policy to protect the ceded lands corpus until the unrelinquished claims of Native Hawaiians are resolved, and OHA shall oppose the alienation of any ceded lands by the State of Hawai‘i, except in the following limited situations ... (1) OHA shall not oppose a resolution submitted to the Hawai‘i State Legislature pursuant to Act 176 (2009) and Act 169 (2011) for the sale of fee simple interest of

apartments, townhouses, and houses for home ownership, where... [3] sales of the fee simple interest were approved by the responsible state housing agency prior to the filing of the lawsuit *OHA v. Hawaii Finance and Development Corporation*, Civil No. 94-4207-11, First Circuit Court, State of Hawai‘i, November 4, 1994. (emphasis added).

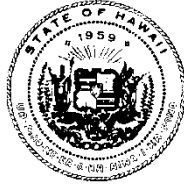
Accordingly, OHA would not oppose the fee sales of “ceded” lands as described in in this measure, to the extent that such sales would fall within the scope of the exceptions to the BOT policy to oppose the sale of “ceded” lands – notably, exception (3) described above.

While OHA would not oppose sales of “ceded” lands as described in this measure, in its prior hearing, OHA did request the inclusion of a three month prior notice requirement similar to that provided for under Act 169. Such prior notice would provide OHA with the opportunity to review and ensure that any proposed sales of leased “ceded” lands under this measure are consistent with its provisions, i.e. that such sales would in fact fall within OHA’s exception to its general opposition to the sale of “ceded” lands. As such, OHA expresses our **appreciation** for the incorporation of our suggested amendments in the HD1 version of this bill, to better ensure the protection of public and potentially “ceded” lands from inappropriate alienation. **We respectfully urge the Committee to maintain this language, should it choose to move this measure forward.**

Mahalo nui for the opportunity to testify on this measure.

Hb77

DAVID Y. IGE  
GOVERNOR



DENISE ISERI-MATSUBARA  
EXECUTIVE DIRECTOR

## STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
677 QUEEN STREET, SUITE 300  
Honolulu, Hawaii 96813  
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of  
**DENISE ISERI-MATSUBARA**  
Hawaii Housing Finance and Development Corporation  
Before the

### HOUSE COMMITTEE ON WATER & LAND

February 16, 2021 at 8:30 a.m.  
State Capitol, Room 430

In consideration of  
**H.B. 77, H.D. 1**  
**RELATING TO LANDS CONTROLLED BY THE STATE.**

The HHFDC ***strongly supports*** H.B. 77, H.D. 1, a bill that would exempt certain leasehold condominium units and house lots from the §171-64.7, HRS legislative approval requirement. The bill also requires HHFDC to provide the Office of Hawaiian Affairs with documentation of the sale of a condominium unit or house lot at least three months prior to the sale.

The process of obtaining legislative approval of the sale of the leased fee interest in state-owned land is a costly and burdensome process that takes individual homeowners over a full calendar to complete before the sale can be closed, assuming that the Legislature approves the proposed sale.

The intent of Act 176, Session Laws of Hawaii 2009, as codified in §171-64.7, Hawaii Revised Statutes, was to "establish a more comprehensive process for the sale of state-owned land, and to reserve a larger role for the legislature to assure that key information about certain sales or exchanges of land is shared with the legislature." This intent has little application to individual condominium units and house lots in developments constructed several decades ago, and in which the majority of their neighbors had already acquired the leased fee interest in their homes. Therefore, it makes sense to exempt homes in these developments.

Thank you for the opportunity to testify.